

Practitioner's Docket No. 2874-CIP

PATENT

17497 U.S. PTO  
10/695055

Preliminary Classification:

Proposed Class:

Subclass:

NOTE: "All applicants are requested to include a preliminary classification on newly filed patent applications. The preliminary classification, preferably class and subclass designations, should be identified in the upper right-hand corner of the letter of transmittal accompanying the application papers, for example 'Proposed Class 2, subclass 129.'" M.P.E.P. § 601, 7<sup>th</sup> ed.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Mail Stop Patent Application  
Commissioner for Patents  
P. O. Box 1450  
Alexandria, VA 22313-1450

NEW APPLICATION TRANSMITTAL

Transmitted herewith for filing is the patent application of

Inventor(s): PATRICK P. HUSSEY

**WARNING:** 37 C.F. R. § 1.41(a)(1) points out:

"(a) A patent is applied for in the name or names of the actual inventor or inventors

"(1) the inventorship of a nonprovisional application is that inventorship set forth in the oath or declaration as prescribed by § 1.63, except as provided for in § 1.53(d)(4) and § 1.63(d). If an oath or declaration as prescribed by § 1.63 is not filed during the pendency of a nonprovisional application, the inventorship is that inventorship set forth in the application papers filed pursuant to § 1.53(b), unless a petition under this paragraph accompanied by the fee set forth in § 1.17(l) is filed supplying or changing the name or names of the inventor or inventors."

**EXPRESS MAILING UNDER 37 C.F.R. § 1.10\***

(Express Mail label number is **mandatory**.)

(Express Mail certification is optional.)

I hereby certify that this paper, along with any document referred to, is being deposited with the United States Postal Service on this date October 27, 2003

in an envelope addressed to the Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450 as "Express Mail Post Office to Addressee" Mailing Label No.

ER 21412268 US

DONN K. HARMS

(Type or print name of person mailing paper)

Signature of person certifying

## 1. Type of Application

This new application is for a(n)

(check one applicable item below):

- ☒ Original (nonprovisional)
- ☐ Design
- ☐ Plant

**WARNING:** Do not use this transmittal for a completion in the U.S. of an International Application under 35 U.S.C. § 371(c)(4) unless the International Application is being filed as a divisional, continuation or continuation-in-part application.

**WARNING:** Do not use this transmittal for the filing of a provisional application.

**NOTE:** If one of the following 3 items apply, then complete and attach ADDED PAGES FOR NEW APPLICATION TRANSMITTAL WHERE BENEFIT OF A PRIOR U.S. APPLICATION CLAIMED and a NOTIFICATION IN PARENT APPLICATION OF THE FILING OF THIS CONTINUATION APPLICATION.

- ☐ Divisional
- ☐ Continuation
- ☒ Continuation-in-part (CIP)

## 2. Benefit of Prior U.S. Application(s)(35 USC 120)

**NOTE:** A nonprovisional application may claim an invention disclosed in one or more prior filed copending nonprovisional applications or copending international applications designating the United States of America. In order for a nonprovisional application to claim the benefit of a prior filed copending nonprovisional application or copending international application designating the United States of America, each prior application must name as an inventor at least one inventor named in the later filed nonprovisional application and disclose the named inventor's invention claimed in at least one claim of the later filed nonprovisional application in the manner provided by the first paragraph of 35 U.S.C. § 112. Each prior application must also be:

- (i) An international application entitled to a filing date in accordance with PCT Article 11 and designating the United State of America; or
  - (ii) Complete as set forth in § 1.51(b); or
  - (iii) Entitled to a filing date as set forth in § 1.53(b) or § 1.53(d) and include the basic filing fee set forth in § 1.16; or
  - (iv) Entitled to a filing date as set forth in § 1.53(b) and have paid therein the processing and retention fee set forth in § 1.21(l) within the time period set forth in § 1.53(f).
- 37 C.F.R. § 1.78(a)(1).

**NOTE:** If the new application being transmitted is a divisional, continuation or a continuation-in-part of a parent case, or where the parent case is an International Application which designated the U.S., or benefit of a prior provisional application is claimed, then check the following item and complete and attach ADDED PAGES FOR NEW APPLICATION TRANSMITTAL WHERE BENEFIT OF PRIOR U.S. APPLICATION(S) CLAIMED

**WARNING:** If an application claims the benefit of the filing date of an earlier filed application under 35 U.S.C. §§ 120, 121 or 365(c), the 20-year term of that application will be based upon the filing date of the earliest U.S. application will be based upon the filing date of the earliest U.S. application that the application makes reference to under 35 U.S.C. §§ 120, 121 or 365(c). (35 U.S.C. § 154(a)(2) does not take into account, for the determination of the patent term, any application on which priority is claimed under 35 U.S.C. §§ 119, 365(a) or 365(b).) For a c-i-p application, applicant should review whether any claim in the patent that will issue is supported by an earlier application and, if not, the applicant should consider canceling the reference to the earlier filed application. The term of a patent is not based on a claim-by-claim approach. See Notice of April 14, 1995, 60 Fed. Reg. 20,195, at 20,205.

**WARNING:** 37 C.F.R. § 1.78 Claiming benefit of earlier filing date and cross-references to other application

“(a) \*\*\*

(2) Except for a continued prosecution application filed under § 1.53(d), any nonprovisional application claiming the benefit of one or more prior filed copending nonprovisional applications or international applications designating the United States of America must contain a reference to each such prior application, identifying it by application number (consisting of the series code and serial number) or international application number and international filing date and indicating the relationship of the applications. This reference must be submitted during the pendency of the application, and within the later of four months from the actual filing date of the application or sixteen months from the filing date of the prior application. This time period is not extendable. Unless the reference required by this paragraph is included in an application data sheet (§ 1.76), the specification must contain or be amended to contain such reference in the first sentence following the title. If the application claims the benefit of an international application, the first sentence of the specification must include an indication of whether the international application was published under PCT Article 21(2) in English (regardless of whether benefit for such application is claimed in the application data sheet). The request for a continued prosecution application under § 1.53(d) is the specific reference required by 35 U.S.C. 120 to the prior application. The identification of an application by application number under this section is the specific reference required by 35 U.S.C. 120 to every application assigned that application number. Cross references to other related applications may be made when appropriate (see § 1.14). Except as provided in paragraph (a)(3) of this section, the failure to timely submit the reference required by 35 U.S.C. 120 and this paragraph is considered a waiver of any benefit under 35 U.S.C. 120, 121, or 365(c) to such prior application. The time period set forth in this paragraph does not apply to an application for a design patent.” Emphasis added

- ☒ The new application being transmitted claims the benefit of prior U.S. applications(s) and enclosed are ADDED PAGES FOR NEW APPLICATION TRANSMITTAL WHERE BENEFIT OF PRIOR U.S. APPLICATION(S) CLAIMED.

### 3. Papers Enclosed

#### A. Required for filing date under 37 C.F.R. § 1.53(b) (Regular) or 37 C.F.R. § 1.53 (Design) Application

20 Pages of specification

7 Pages of claims

3 Sheets of drawing

**WARNING :** DO NOT submit original drawings. A high quality copy of the drawings should be supplied when filing a patent application. The drawings that are submitted to the Office must be on strong, white, smooth, and non-shiny paper and meet the standards according to § 1.84. If corrections to the drawings are necessary, they should be made to the original drawing and a high-quality copy of the corrected original drawing then submitted to the Office. Only one copy is required or desired. For comments on proposed then-new 37 CFR § 1.84, see Notice of March 9, 1988 (1990 O.G. 57-62).

**NOTE:** "Identifying indicia, if provided, should include the application number or the title of the invention, inventor's name, docket number (if any), and the name and telephone number of a person to call if the Office is unable to match the drawings to the proper application. This information should be placed on the back of each sheet of drawing a minimum of 1.5 cm. (5/8 inch) down from the top of the page. 37 C.F.R. §1.84(c)

(Complete the following, if applicable)

- ☐ The enclosed drawing(s) are photograph(s).

Note: 37 C.F.R. 1.84

"(b) Photographs.

"(1) Black and white. Photographs, including photocopies of photographs, are not ordinarily permitted in utility and design patent applications. The Office will accept photographs in utility and design patent applications, however, if photographs are the only practicable medium for illustrating the claimed invention. For example, photographs or photomicrographs of: electrophoresis gels, blots (e.g. immunological, western, Southern and Northern), auto radiographs, cell cultures (stained and unstained), histological tissue cross sections (stained and unstained), animals, plants, in vivo imaging, thin layer chromatography plates, crystalline structures, and, in a design patent application, ornamental effects, are acceptable. If the subject matter of the application admits of illustration by a drawing, the examiner may require a drawing in place of the photograph. The photographs must be of sufficient quality so that all details in the photographs are reproducible in the printed patent.

"(2) Color photographs. Color photographs will be accepted in utility and design patent applications if the conditions for accepting color drawings and black and white photographs have been satisfied. See paragraphs (a)(2) and (b)(1) of this section."

- ☐ The enclosed drawing(s) are in color. Three (3) sets of color drawings and a 'PETITION TO ACCEPT COLOR DRAWING(S)' are attached. 37 C.F.R. § 1.84(a)(2) and 1.84(b).

Note: 37 C.F.R. 1.84(a)

"(2) Color. On rare occasions, color drawings may be necessary as the only practical medium by which to disclose the subject matter sought to be patented in a utility or design patent application or the subject matter of a statutory invention registration. The color drawings must be of sufficient quality such that all details in the drawings are reproducible in black and white in the printed patent. Color drawings are not permitted in international applications (see PCT Rule 11.13), or in an application, or copy thereof, submitted under the Office electronic filing system. The Office will accept color drawings in utility or design patent applications and statutory invention registrations only after granting a petition filed under this paragraph explaining why the color drawings are necessary. Any such petition must include the following:

(i) The fee set forth in § 1.17(h);

(ii) Three (3) sets in color drawings;

(iii) A black and white photocopy that accurately depicts, to the extent possible, the subject matter shown in the color drawing; and

(iv) An amendment to the specification to insert (unless the specification contains or has been previously amended to contain) the following language as the first paragraph of the brief description of the drawings:

The patent or application file contains at least one drawing executed in color. Copies of this patent or patent application publication with color drawing(s) will be provided by the Office upon request and payment of the necessary fee."

☒ formal

☐ informal

**B. Other Papers Enclosed**

10 Pages of declaration and power of attorney

1 Pages of abstract

\_\_\_\_\_ Other

**4. Additional papers enclosed**

- ☐ Amendment to claims
- ☐ Cancel in this applications claims \_\_\_\_\_ before calculating the filing fee. (At least one original independent claim must be retained for filing purposes.)
- ☐ Add the claims on the attached amendment. (Claims added have been numbered consecutively following the highest numbered original claims.)
- ☐ Preliminary Amendment
- ☒ Information Disclosure Statement (37 CFR 1.98)

Note: 37 C.F.R. § 1.97(b) An information disclosure statement shall be considered by the Office if filed by the applicant within any one of the following time periods:

- (1) Within three months of the filing date of a national application other than a continued prosecution application under § 1.53(d);
- (2) Within three months of the date of entry of the national stage as set forth in § 1.491 in an international application;
- (3) Before the mailing of a first Office action on the merits; or

**WARNING:** In order to ensure consideration of information previously submitted but which has not been considered in the parent application, an applicant must resubmit the information, complying with 37 C.F.R. § 1.97 and 37 C.F.R. § 1.98, in the continuing application filed under 37 C.F.R. § 1.53(b). See § 609B(3), M.P.E.P., 7<sup>th</sup> Edition, Rev. 1.

- ☐ Form PTO-1449
- ☐ Citations
- ☐ Declaration of Biological Deposit
- ☐ Submission of "Sequence Listing," computer readable copy and/or amendment pertaining thereto for biotechnology invention containing nucleotide and/or amino acid sequence
- ☐ Authorization of Attorney(s) to Accept and Follow Instructions from Representative
- ☐ Special Comments

**5. Declaration or oath (including power of attorney)**

NOTE: A newly executed declaration is not required in a continuation or divisional application provided that the prior nonprovisional application contained a declaration as required, the application being filed is by all or fewer than all the inventors named in the prior application, there is no new matter in the application being filed, and a copy of the executed declaration filed in the prior application (showing the signature or an indication thereon that it was signed) is submitted. The copy must be accompanied by a statement requesting deletion of the names of person(s) who are not inventors of the application being filed. If the declaration in the prior application was filed under § 1.47, then a copy of that declaration must be filed accompanied by a copy of the decision granting § 1.47 status or, if a nonsigning person under § 1.47 has subsequently joined in a prior application, then a copy of the subsequently executed declaration must be filed. See C.F.R. §§ 1.63(d)(1)-(3).

NOTE: A declaration filed to complete an application must be executed, identify the specification to which it is directed, identify each inventor by full name including family name and at least one given name, without abbreviation together with any other given name or initial, and the residence, post office address and country or citizenship of each inventor, and state whether the inventor is a sole or joint inventor. 37 C.F.R. § 1.63(a)(1)-(4)

NOTE: "The inventorship of a nonprovisional application is that inventorship set forth in the oath or declaration as prescribed by § 1.62, except as provided for in § 1.53(d)(4) and § 1.63(d). If an oath or declaration as prescribed by § 1.63 is not filed during the pendency of a nonprovisional application, the inventorship is that inventorship set forth in the application papers filed pursuant to § 1.53(b), unless a petition under this paragraph accompanied by the fee set forth in § 1.17(l) is filed supplying or changing the name or names of the inventor or inventors." 37 C.F.R. § 1.41(a)(1).

- ☒ Enclosed
- Executed by \_\_\_\_\_
- (check all applicable boxes)
- ☒ inventor(s).

- ☐ legal representative of inventor(s). 37 CFR §§ 1.42 or 1.43
- ☐ joint inventor or person showing a proprietary interest on behalf of inventor who refused to sign or cannot be reached.

☐ this is the petition required by 37 CFR §1.47 and the statement required by 37 CFR §1.47 is also attached. See item 12 below for fee.

☐ Not enclosed.

NOTE: Where the filing is a completion in the U.S. of an International Application or where the completion of the U.S. application contains subject matter in addition to the International Application, the application may be treated as a continuation or continuation-in-part, as the case may be, utilizing ADDED PAGE FOR NEW APPLICATION TRANSMITTAL WHERE BENEFIT OF PRIOR U.S. APPLICATION CLAIMED

☐ Application is made by a person authorized under 37 CFR §1.41(c) on behalf of *all* the above named inventor(s).

(The declaration or oath, along with the surcharge required by 37 CFR §1.16(e) can be filed subsequently).

☐ Showing that the filing is authorized.  
(not required unless called into question. 37 CFR §1.41(d).)

## 6. Inventorship Statement

\* WARNING: If the named inventors are each not the inventors of all the claims, an explanation, including the ownership of the various claims at the time the last claimed invention was made, should be submitted.

\* The inventorship for all the claims in this application are:

☒ The same

or

☐ Not the same. An explanation, including the ownership of the various claims at the time the last claimed invention was made,

☐ is submitted

☐ will be submitted.

## 7: Language

NOTE: An application including a signed oath or declaration may be filed in a language other than English. A verified English translation of the non-English language application and the processing fee of \$130.00 required by 37 CFR § 1.17(k) is required to be filed with the application or within such time as may be set by the Office. 37CFR § 1.52(d).

☒ English

☐ non-English

☐ the attached translation includes a statement that the translation is accurate. 37 CFR §1.52(d).

## 8. Assignment

☒ An assignment of the invention to K2, Inc.

☒ is attached. A separate ☒ COVER SHEET FOR ASSIGNMENT (DOCUMENT) ACCOMPANYING NEW PATENT APPLICATION" or ☐ FORM PTO 1595 is also attached.

☐ will follow

NOTE: "If an assignment is submitted with a new application, send two separate letters-one for the application and one for the assignment." Notice of May 4, 1990 (1114 O.G. 77-78)

**WARNING:** A newly executed "CERTIFICATE UNDER 37 C.F.R. § 3.73(b)" must be filed when a continuation-in-part application is filed by an assignee. Notice of April 30, 1993, 1150 O.G. 62-64.

☐ This is a ☐ continuation ☐ divisional application and the assignment document for the parent application

0 / \_\_\_\_\_ was filed on \_\_\_\_\_.

Reel \_\_\_\_\_

Frame \_\_\_\_\_

## 9. Certified Copy

Certified copy(ies) of application(s)

Country	Appln. No.	Filed
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Country	Appln. No.	Filed
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Country	Appln. No.	Filed
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from which priority is claimed

☐ is(are) attached.

☐ will follow.

NOTE: The foreign application forming the basis for the claim for priority must be referred to in the oath or declaration. 37 CFR § 1.55(a) and 1.63.

NOTE: This item is for any foreign priority for which the application being filed directly relates. If any parent U.S. application or International Application from which this application claims benefit under 35 U.S.C. § 120 is itself entitled to priority from a prior foreign application, then complete item 18 on the ADDED PAGES FOR NEW APPLICATION TRANSMITTAL WHERE BENEFIT OF PRIOR U.S. APPLICATION(S) CLAIMED

## 10. Fee Calculation (37 CFR § 1.16)

A. ☒ Regular application

### CLAIMS AS FILED

Number filed	Number Extra	Rate	Basic Fee 37 C.F.R. § 1.16(a) \$770.00
Total			
Claims (37 C.F.R. § 1.16©)	24 - 20 = 4	X \$ 18.00	72.00
Independent			
Claims (37 C.F.R. § 1.16(b))	1 - 3 = 0	X \$ 86.00	
Multiple dependent claims(s),			
if any (37 C.F.R. § 1.16(d))		+ \$290.00	

☐ Amendment canceling extra claims is enclosed.

☐ Amendment deleting multiple dependencies is enclosed.

☐ Fee for extra claims is not being paid at this time.

NOTE: If the fees for extra claims are not paid on filing, they must be paid or the claims canceled by amendment, prior to the expiration of the time period set for response by the Patent and Trademark Office in any notice of fee deficiency. 37 CFR § 1.16(d).

Filing Fee Calculation \$ 842.00

B. ☐ Design application  
(\$340.00--37 CFR § 1.16(f))

Filing Fee Calculation \$ \_\_\_\_\_

C. ☐ Plant application  
(\$530.00--37 CFR § 1.16(g))

Filing fee Calculation \$ \_\_\_\_\_

## 11. Assertion of Small Entity Status

☐ Applicant hereby asserts status as a small entity under 37 CFR § 1.27

**NOTE:** "37 C.F.R. § 1.27 (c) deals with the assertion of small entity status, whether by a written specific declaration thereof or by payment as a small entity of the basic filing fee or the fee for the entry into the national phase and states:

"(c) Assertion of small entity status. Any party (person, small business concern or nonprofit organization) should make a determination, pursuant to paragraph (f) of this section, of entitlement to be accorded small entity status based on the definitions set forth in paragraph (a) of this section, and must, in order to establish small entity status for the purpose of paying small entity fees, actually make an assertion of entitlement to small entity status, in the manner set forth in paragraphs (c)(1) or (c)(3) of this section, in the application or patent in which such small entity fees are to be paid.

(1) Assertion by writing. Small entity status may be established by a written assertion of entitlement to small entity status. A written assertion must:

- (i) Be clearly identifiable;
- (ii) Be signed (see paragraph (c)(2) of this section); and
- (iii) Convey the concept of entitlement to small entity status, such as by stating that applicant is a small entity, or that small entity status is entitled to be asserted for the application or patent. While no specific words or wording are required to assert small entity status, the intent to assert small entity status must be clearly indicated in order to comply with the assertion requirement.

(2) Parties who can sign and file the written assertion. The written assertion can be signed by:

- (i) One of the parties identified in § 1.33(b) (e.g., an attorney or agent registered with the Office), § 3.73(b) of this chapter notwithstanding, who can also file the written assertion;
- (ii) At least one of the individuals identified as an inventor (even though a § 1.63 executed oath or declaration has not been submitted), notwithstanding § 1.33(b)(4), who can also file the written assertion pursuant to the exception under § 1.33(b) of this part; or
- (iii) An assignee of an undivided part interest, notwithstanding §§ 1.33(b)(3) and 3.73(b) of this chapter, but the partial assignee cannot file the assertion without resort to a party identified under § 1.33(b) of this part.

(3) Assertion by payment of the small entity basic filing or basic national fee. The payment, by any party, of the exact amount of one of the small entity basic filing fees set forth in §§ 1.16(a), (f), (g), (h), or (k), or one of the small entity basic national fees set forth in § 1.49(a)(1), (a)(2), (a)(3), (a)(4), or (a)(5), will be treated as a written assertion of entitlement to small entity status even if the type of basic filing or basic national fee is inadvertently selected in error.

- (i) If the Office accords small entity status based on payment of a small entity basic filing or basic national fee under paragraph (c)(3) of this section that is not applicable to that application, any balance of the small entity fee that is applicable to that application will be due along with the appropriate surcharge set forth in § 1.16(e), or § 1.16(f).
- (ii) The payment of any small entity fee other than those set forth in paragraph (c)(3) of this section (whether in the exact fee amount or not) will not be treated as a written assertion of entitlement to small entity status and will not be sufficient to establish small status in an application or a patent."

**WARNING:** "37 C.F.R. § 1.27(c)(4): "Assertion required in related, continuing and reissue applications. Status as a small entity must be specifically established by an assertion in each related, continuing and reissue application in which status is appropriate and desired. Status as a small entity in one application or patent does not affect the status of any other application or patent, regardless of the relationship of the applications or patents. The refiling of an application under § 1.53 as a continuation, division, or continuation-in-part (including a continued prosecution application under § 1.53 (d), or the filing of a reissue application, requires a new assertion as to continued entitlement to small entity status for the continuing or reissue application".

**WARNING:** "Small entity status must not be established when the person or persons signing the ...statement can **unequivocally** make the required self-certification." M.P.E.P., § 509.03 (emphasis added).

(complete the following, if applicable)

☐ Status as a small entity was asserted in the prior application  
\_\_\_\_\_/\_\_\_\_\_, filed on \_\_\_\_\_, from which benefit is being  
claimed for this application under:

- 35 U.S.C. § ☐ 119(e),  
☐ 120,  
☐ 121,  
☐ 365(c),

and which status as a small entity is still proper and asserted for this application.

- ☐ A copy of the written assertion of small entity filed in the prior application is included.

Note A refund based on establishment of small entity status, of a portion of fees timely paid in full prior to establishing status as a small entity may only be obtained if an assertion under § 1.27(c) and a request for a refund of the excess amount are filed within three months of the date of the timely payment of the full fee. The three-month time period is not extendable under § 1.136, 37 C.F.R. § 1.28(a)

Filing Fee Calculation (50% of A, B, or C above)

\$ \_\_\_\_\_

**12. Request for International-Type Search (37 CFR § 1.104(d))**

(complete, if applicable)

- ☐ Please prepare an international-type search report for this application at the time when national examination on the merits takes place.

**13. Fee Payment Being Made At This Time**

- ☐ Not Enclosed
- ☐ No filing fee is to be paid at this time.

(This and the surcharge required by 37 CFR § 1.16(e) can be paid subsequently.)

☒ Enclosed

- ☒ Filing fee \$ 842.00
- ☒ Recording assignment (\$40.00; 37 C.F.R. § 1.21(h) (See attached "COVER SHEET FOR ASSIGNMENT ACCOMPANYING NEW APPLICATION".)) \$ 40.00
- ☐ Petition fee for filing by other than all the inventors or person on behalf of the inventor where inventor refused to sign or cannot be reached (\$130.00; 37 C.F.R. §§ 1.47 and 1.17(i)) \$ \_\_\_\_\_
- ☐ For processing an application with a specification in a non-English language. (\$130.00; 37 C.F.R. § 1.52(d) and § 1.17(k)) \$ \_\_\_\_\_
- ☐ Processing and retention fee (\$130.00; 37 C.F.R. §§ 1.53(d) and 1.21(l)) \$ \_\_\_\_\_
- ☐ Fee for international-type search report (\$40.00; 37 CFR § 1.21(e)) \$ \_\_\_\_\_

NOTE: 37 C.F.R. § 1.21(l) establishes a fee for processing and retaining any application that is abandoned for failing to complete the application pursuant to 37 C.F.R. § 1.53(f) and this, as well as the changes to 37 C.F.R. §§ 1.53 and 1.78(a)(1), indicate that in order to obtain the benefit of a prior U.S. application, either the basic filing fee must be paid, or the processing and retention fee of § 1.21(l) must be paid, within 1 year from notification under § 53(f).

**Total fees enclosed** \$ 882.00



#### 14. Method of Payment of Fees

- ☒ Attached is a ☒ check ☐ money order in the amount of \$ 882.00
- ☒ Authorization is hereby made to charge the amount of \$ See 15 below
- ☒ to Deposit Account No. 07-1338
- ☐ to Credit card as shown on the attached credit card information authorization form PTO-2038.

**WARNING:** Credit card information should not be included on this form as it may become public.

- ☐ Charge any additional fees required by this paper or credit any overpayment in the manner authorized above.

A duplicate of this paper is attached.

#### 15. Authorization to Charge Additional Fees

**WARNING:** If no fees are to be paid on filing, the following items should **not** be completed

**WARNING:** Accurately count claims, especially multiple dependent claims, to avoid unexpected high charges, if extra claim charges are authorized.

- ☒ The Office is hereby authorized to charge, in the manner shown above, the following additional fees that may be required by this paper and during the entire pendency of this application.

☒ 37 CFR § 1.16(a), (f) or (g) (filing fees)

☒ 37 CFR § 1.16 (b), (c) and (d) (presentation of extra claims)

**NOTE:** Because additional fees for excess or multiple dependent claims not paid on filing or on later presentation must only be paid or these claims canceled by amendment prior to the expiration of the time period set for response by the PTO in any notice of fee deficiency (37 CFR § 1.16(d)), it might be best not to authorize the PTO to charge additional claim fees, except possibly when dealing with amendments after final action.

☒ 37 CFR § 1.16(e) (surcharge for filing the basic filing fee and/or declaration on a date later than the filing date of the application)

☒ 37 CFR § 1.17 (application processing fees)

**NOTE:** "...A written request may be submitted in an application that is an authorization to treat any concurrent or future reply, requiring a petition for an extension of time under this paragraph for its timely submission, as incorporating a petition for extension of time for the appropriate length of time. An authorization to charge all required fees, fees under § 1.17, or all required extension of time fees will be treated as a constructive petition for an extension of time in any concurrent or future reply requiring a petition for an extension of time under this paragraph for its timely submission. Submission of the fee set forth in § 1.17(a) will also be treated as a constructive petition for an extension of time in any concurrent reply requiring a petition for an extension of time under this paragraph for its timely submission." 37 C.F.R. § 1.136(a)(3).

☐ 37 CFR § 1.18 (issue fee at or before mailing of Notice of Allowance, pursuant to 37 C.F.R. § 1.311(b)).

**NOTE:** Where an authorization to charge the issue fee to a deposit account has been filed before the mailing of a Notice of Allowance, the issue fee will be automatically charged to the deposit account at the time of mailing the notice of allowance. 37 CFR § 1.311(b).

**NOTE:** 37 CFR § 1.28(b) requires "Notification of any change in status resulting in loss of entitlement to small entity status must be filed in the application...prior to paying, or at the time of paying... the issue fee". From the wording of 37 CFR § 1.28(b), (a) notification of change of status must be made even if the fee is paid as "other than a small entity" and (b) no notification is required if the change is to another small entity.

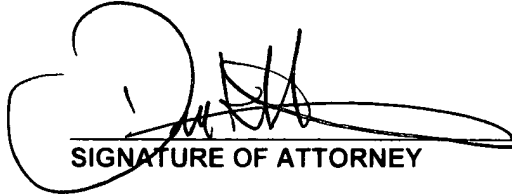
## 16. Instructions As To Overpayment

NOTE: "...Amounts of twenty-five dollars or less will not be returned unless specifically requested within a **reasonable time**, nor will the payer be notified of such amounts; amounts over twenty-five dollars may be returned by check or, if requested, by credit to a deposit account." 37 C.F.R. § 1.26(a).

☒ Credit Account No. 07-1338

☐ Re fund

Reg. No. 38,911  
Customer No. 30084



SIGNATURE OF ATTORNEY

Tel. No. (858) 509-1400  
Fax. No. (858) 509-1677

DONN K. HARMS  
(type or print name of attorney)

12702 Via Cortina, Suite 200

Del Mar, CA 92014

☒ **Incorporation by reference of added pages**

(check the following item if the application in this transmittal claims the benefit of prior U.S. application(s) (including an international application entering the U.S. stage as a continuation, divisional or C-I-P application) and complete and attach the ADDED PAGES FOR NEW APPLICATION TRANSMITTAL WHERE BENEFIT OF PRIOR U.S. APPLICATION(S) CLAIMED

- ☐ Plus Added Pages For New Application Transmittal Where Benefit Of Prior U.S. Application(s) Claimed

Number of pages added \_\_\_\_\_

- ☐ Plus Added Pages For Papers Referred To In Item 4 Above

Number of pages added \_\_\_\_\_

- ☐ Plus added pages deleting names of inventor(s) named in prior application(s) who is/are no longer inventor(s) of the subject matter claimed in this application.

Number of pages added \_\_\_\_\_

- ☐ Plus "Assignment Cover Letter Accompanying New Application"

Number of pages added \_\_\_\_\_

☐ **Statement Where No Further Pages Added**

(If no further pages form a part of this Transmittal, then end this Transmittal with this page and check the following item)

- ☐ This transmittal ends with this page.

# ADDED PAGES FOR APPLICATION TRANSMITTAL WHERE BENEFIT OF PRIOR U.S. APPLICATION(S) CLAIMED

NOTE: See 37 C.F.R. § 1.78.

## 17. R late Back

**WARNING:** If an application claims the benefit of the filing date of an earlier filed application under 35 U.S.C. § 120, 121 or 365(c), the 20-year term of that application will be based upon the filing date of the earliest U.S. application that the application makes reference to under 35 U.S.C. § 120, 121 or 365(c). (35 U.S.C. § 154(a)(2) does not take into account, for the determination of the patent term, any application on which priority is claimed under 35 U.S.C. § 119, 365(a) or 365(b).) For a c-i-p application, applicant should review whether any claim in the patent that will issue is supported by an earlier application and, if not, the applicant should consider canceling the reference to the earlier filed application. The term of a patent is not based on a claim-by-claim approach. See Notice of April 14, 1995, 60 Fed. Reg. 20,195, at 20,205.

(complete the following, if applicable)

☐ Amend the specification by inserting, before the first line, the following sentence:

### A. 35 U.S.C. § 119(e)

NOTE: "Any nonprovisional application claiming the benefit of one or more prior filed copending provisional applications must contain or be amended to contain in the first sentence of the specification following the title a reference to each such prior provisional application, identifying it as a provisional application, and including the provisional application number (consisting of series code and serial number)." 37 C.F.R. § 1.78(a)(4).

☐ "This application claims the benefit of U.S. Provisional Application(s) No(s):

APPLICATION NO(S):	FILING DATE
_____	_____
_____	_____
_____	_____

### B. 35 U.S.C. Sections 120, 121 and 365(c)

NOTE: "Except for a continued prosecution application filed under § 1.53(d), any nonprovisional application claiming the benefit of one or more prior filed copending nonprovisional applications or international applications designating the United States of America must contain or be amended to contain in the first sentence of the specification following the title a reference to each such prior application, identifying it by application number (consisting of the series code and serial number) or international application number and international filing date and indicating the relationship of the applications. . . . Cross-references to other related applications may be made when appropriate." (See § 1.14 a 37 C.F.R. § 1.78 a 12)

- ☒ "This application is a
- ☐ continuation
  - ☒ continuation-in-part
  - ☐ divisional

of copending application(s)

- ☒ application number 10/ 098,980 filed on 03/15/2002 "
- ☐ International Application \_\_\_\_\_ filed on \_\_\_\_\_ and which designated the U.S."
- ☐ The international application was published under PCT Article 21(2) in English (37 C.F.R. § 1.78(a)(2))

NOTE: The proper reference to a prior filed PCT application that entered the U.S. national phase is the U.S. serial number and the filing date of the PCT application that designated the U.S.

NOTE: (1) Where the application being transmitted adds subject matter to the International Application, then the filing can be as a continuation-in-part or (2) if it is desired to do so for other reasons then the filing can be as a continuation.

NOTE: The deadline for entering the national phase in the U.S. for an international application was clarified in the Notice of April 28, 1987 (1079 O.G. 32 to 46) as follows:

"The Patent and Trademark Office considers the International application to be pending until the 22nd month from the priority date if the United States has been designated and no Demand for International Preliminary Examination has been filed prior to the expiration of the 19th month from the priority date and until the 32nd month from the priority date if a Demand for International Preliminary Examination which elected the United States of America has been filed prior to the expiration of the 19th month from the priority date, provided that a copy of the international application has been communicated to the Patent and Trademark Office within the 20 or 30 month period respectively. If a copy of the international application has not been communicated to the Patent and Trademark Office within the 20 or 30 month period respectively, the international application becomes abandoned as to the United States 20 or 30 months from the priority date respectively. These periods have been placed in the rules as paragraph (h) of § 1.494 and paragraph (l) of § 1.495. A continuing application under 35 U.S.C. 365(c) and 120 may be filed anytime during the pendency of the international application."

- ☐ "The nonprovisional application designated above, namely application \_\_\_\_\_, filed \_\_\_\_\_, claims the benefit of U.S. Provisional Application(s) No(s):

APPLICATION NO(S): FILING DATE

\_\_\_\_\_/\_\_\_\_\_ "

\_\_\_\_\_/\_\_\_\_\_ "

\_\_\_\_\_/\_\_\_\_\_ "

- ☐ Where more than one reference is made above please combine all references into one sentence.

**18. Relat Back—35 U.S.C. § 119 Priority Claim for Prior Application**

The prior U.S. application(s), including any prior International Application designating the U.S., identified above in item 17B, in turn itself claim(s) foreign priority(ies) as follows:

Country	Appln. No.	Filed
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The certified copy(ies) has (have)

- ☐ been filed on \_\_\_\_\_, in prior application 0 / \_\_\_\_\_,  
which was filed on \_\_\_\_\_.
- ☐ is (are) attached.

**WARNING:** *The certified copy of the priority application that may have been communicated to the PTO by the International Bureau may not be relied on without any need to file a certified copy of the priority application in the continuing application. This is so because the certified copy of the priority application communicated by the International Bureau is placed in a folder and is not assigned a U.S. serial number unless the national stage is entered. Such folders are disposed of if the national stage is not entered. Therefore, such certified copies may not be available if needed later in the prosecution of a continuing application. An alternative would be to physically remove the priority documents from the folders and transfer them to the continuing application. The resources required to request transfer, retrieve the folders, make suitable record notations, transfer the certified copies, enter and make a record of such copies in the Continuing Application are substantial. Accordingly, the priority documents in folders of international applications that have not entered the national stage may not be relied on. Notice of April 28, 1987 (1079 O.G. 32 to 46).*

**19. Maintenance of Copendency of Prior Application**

**NOTE:** *The PTO finds it useful if a copy of the petition filed in the prior application extending the term for response is filed with the papers constituting the filing of the continuation application. Notice of November 5, 1985 (1060 O.G. 27).*

- A. ☐ Extension of time in prior application

*(This item must be completed and the papers filed in the prior application, if the period set in the prior application has run.)*

- ☐ A petition, fee and response extends the term in the pending prior application until \_\_\_\_\_.
- ☐ A copy of the petition filed in prior application is attached.

- B. ☐ Conditional Petition for Extension of Time in Prior Application

*(complete this item, if previous item not applicable)*

- ☐ A conditional petition for extension of time is being filed in the pending prior application.
- ☐ A copy of the conditional petition filed in the prior application is attached.

**20. Further Inventorship Statement Where Benefit of Prior Application(s) Claimed**

*(complete applicable item (a), (b) and/or (c) below)*

- (a) ☐ This application discloses and claims only subject matter disclosed in the prior application whose particulars are set out above and the inventor(s) in this application are
- ☐ the same.
- ☐ less than those named in the prior application. It is requested that the following inventor(s) identified for the prior application be deleted:

\_\_\_\_\_  
*(type name(s) of inventor(s) to be deleted)*

- (b) ☒ This application discloses and claims additional disclosure by amendment and a new declaration or oath is being filed. With respect to the prior application, the inventor(s) in this application are
- ☒ the same.
- ☐ the following additional inventor(s) have been added:

\_\_\_\_\_  
*(type name(s) of inventor(s) to be deleted)*

- (c) ☒ The inventorship for all the claims in this application are
- ☒ the same.
- ☐ not the same. An explanation, including the ownership of the various claims at the time the last claimed invention was made
- ☐ is submitted.
- ☐ will be submitted.

**21. Abandonment of Prior Application (if applicable)**

- ☐ Please abandon the prior application at a time while the prior application is pending, or when the petition for extension of time or to revive in that application is granted, and when this application is granted a filing date, so as to make this application copending with said prior application.

**NOTE:** According to the Notice of May 13, 1983 (103, TMOG 6-7), the filing of a continuation or continuation-in-part application is a proper response with respect to a petition for extension of time or a petition to revive and should include the express abandonment of the prior application, conditioned upon the granting of the petition and the granting of a filing date to the continuing application.

**22. Petition for Suspension of Prosecution for the Time Necessary to File an Amendment**

**WARNING:** "The claims of a new application may be finally rejected in the first Office action in those situations where (A) the new application is a continuing application of, or a substitute for, an earlier application, and (B) all the claims of the new application (1) are drawn to the same invention claimed in the earlier application, and (2) would have been properly finally rejected on the grounds of art of record in the next Office action if they had been entered in the earlier application." M.P.E.P. § 706.07(b), 7th ed.

**NOTE:** Where it is possible that the claims on file will give rise to a first action final for this continuation application and for some reason an amendment cannot be filed promptly (e.g., experimental data is being gathered) it may be desirable to file a petition for suspension of prosecution for the time necessary.

*(check the next item, if applicable)*

- ☐ There is provided herewith a Petition To Suspend Prosecution for the Time Necessary to File An Amendment (New Application Filed Concurrently)

(Added Pages for Application Transmittal Where Benefit of Prior U.S. Application(s) Claimed [4-1.4]  
—page 4 of 5—)

**23. Small Entity (37 C.F.R. § 1.28(a))**

- ☐ Applicant has established small entity status by the filing of a statement in parent application \_\_\_\_\_/\_\_\_\_\_ on \_\_\_\_\_.
- ☐ A copy of the statement previously filed is included.

**WARNING:** See 37 C.F.R. § 1.28(a).

**WARNING:** "Small entity status must not be established when the person or persons signing the . . . statement can unequivocally make the required self-certification." M.P.E.P. § 509.03, 7th ed. (emphasis added).

**24. NOTIFICATION IN PARENT APPLICATION OF THIS FILING**

- ☐ A notification of the filing of this

(check one of the following)

- ☐ continuation
- ☒ continuation-in-part
- ☐ divisional

is being filed in the parent application, from which this application claims priority under 35 U.S.C. § 120.